

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

January 26, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

04od-114

Oahu

Amend Prior Board Action of June 24, 2005, under Agenda Item D-8, for Sale of Remnant to Prospect Estates AOA and Sea View AOA, and Cancellation of General Lease No. S-3915 to Sea View AOA, Kewalo, Honolulu, Oahu, Tax Map Key: 2-2-04:65.

REMARKS:

On June 24, 2005, under agenda item D-8, the Board authorized the sale of a remnant to Prospect Estates AOA and Sea View AOA, and cancellation of General Lease No. S-3915 to Sea View AOA (see Exhibit A).

Recently Prospect Estates wrote to Land Division informing staff that their AOA is no longer interested in purchasing a portion of the easement. Sea View also wrote to Land Division informing staff that their AOA is interested in purchasing the entire easement (see Exhibits B & C). Staff has no objections to the sale of the remnant to Sea View AOA.

Because Sea View requests to purchase the entire parcel, the Applicant Requirements section "4) Pay for cost to subdivide the remnant so that portions may be sold to both abutting Applicants" no longer applies and should be deleted. Also, the Applicant Requirements should be amended to reflect a single Applicant.

RECOMMENDATION:

That the Board amend the prior Board action of June 24, 2005, under agenda item D-8 as follows:

1. Delete Prospect Estates AOA as an applicant to purchase a portion of the remnant;
2. Delete Applicant Requirement number 4; and
3. Such other terms and conditions as may be prescribed by the

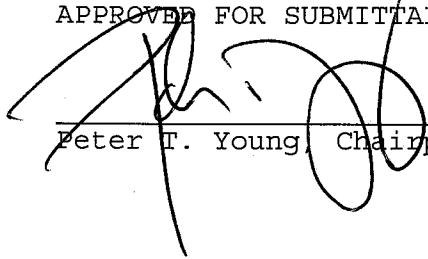
Chairperson to best serve the interests of the State.

Respectfully Submitted,



Al Jodar
Land Agent

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

June 24, 2005

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

04od-114

Oahu

Sale of Remnant to Prospect Estates AOA and Sea View AOA,
and Cancellation of General Lease No. S-3915 to Sea View
AOA, Kewalo, Honolulu, Oahu, Tax Map Key: 2-2-04:65

APPLICANTS:

Association of Apartment Owners of Prospect Estates (Prospect)
whose business and mailing address is c/o National Ind-Comm, LLC,
1165 Bethel Street, 2nd Floor, Honolulu, Hawaii 96813 and
Association of Apartment Owners of Sea View (Sea View), a
domestic nonprofit corporation, whose business and mailing
address is 3179 Koapaka Street, Honolulu, Hawaii 96819-1927.

LEGAL REFERENCE:

Section 171-52, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kewalo situated at Kewalo,
Honolulu, Oahu, identified by Tax Map Key: 2-2-04:65, as shown on
the attached map labeled Exhibit A (Sea View owns parcel 59 and
Prospect owns parcel 1).

AREA:

1,856 square feet, more or less.

ZONING:

State Land Use District: Urban
C & C of Honolulu CZO: A-2 Medium Density Apartment

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES _____ NO x

EXHIBIT "A"

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON 140

June 24, 2005

ITEM D-8

CURRENT USE STATUS:

GL S-3915, 65-year easement for right-of-way purposes

CONSIDERATION:

One-time lump sum payment of fair market value to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Not applicable. Subject lands are to be conveyed to abutting landowner(s) and will become privately owned land at that point. Chapter 343, HRS, would not apply to any future development on the parcel as no State lands would be involved.

DCCA VERIFICATION:

Sea View

Place of business registration confirmed:	YES	<u>x</u>	NO	<u> </u>
Registered business name confirmed:	YES	<u>x</u>	NO	<u> </u>
Applicant in good standing confirmed:	YES	<u>x</u>	NO	<u> </u>

Prospect

Place of business registration confirmed:	YES	<u>x</u>	NO	<u> </u>
Registered business name confirmed:	YES	<u>x</u>	NO	<u> </u>
Applicant in good standing confirmed:	YES	<u>x</u>	NO	<u> </u>

APPLICANT REQUIREMENTS:

Applicants shall be required to:

- 1) Pay for an appraisal to determine the one-time payment of fair market value for the remnant;
- 2) Consolidate the remnant with the Applicants' abutting properties through the County subdivision process;
- 3) Provide survey maps and descriptions according to State DAGS standards and at Applicants' own cost;
- 4) Pay for cost to subdivide the remnant so that portions may be sold to both abutting Applicants.

REMARKS:

Pursuant to section 171-52, HRS, a remnant is defined as "a parcel of land economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics." The subject parcel has been determined to be a remnant by this definition for the following reasons:

The applicants are owners of parcels on either side of the easement as staff has confirmed by City and County of Honolulu Real Property Tax records. According to Section 171-52, HRS, if there is more than one abutting owner who is interested in purchasing the remnant, it shall be sold to the one submitting the highest sealed bid or if the remnant abuts more than one parcel, the Board may allow the subdivision of the remnant so that a portion may be sold to each abutting owner.

Both abutting landowners responded to our letter as wishing to purchase the remnant. An agreement was worked out between Sea View and Prospect on the subdivision of the parcel and a survey map will be provided to the Land Division showing the portions to be sold to each adjacent landowner.

Sea View holds a term easement, General Lease No. S-3915, for right-of-way purposes. Prior to the development of this area, the subject site was shown on maps as drainage. Once the easement was issued in 1965, the site was paved over and any runoff was over the paved surface. The adjacent areas were also paved and the boundary for the easement was not observable. A stonewall and picket fence were constructed sometime after the easement was paved. Although the walls may have been built with the intention of following the boundary, they meander over and beyond the easement and until a recent survey was completed, some issues were raised between Prospect and Sea View regarding encroachment.

The applicants have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Staff notes that the subject parcel was originally designated as a drainage area and some minor runoff still occurs over the surface. Discussions with the City and County of Honolulu, Department of Facilities Maintenance, Road Maintenance Division indicated there are no runoff issues with this area at the present time. To prevent any future changes in the subject area that would adversely affect the water runoff, staff recommends that the conveyance documents require the Applicants to maintain the property for drainage.

With respect to the drainage requirement, staff notes that the Land Board, at its March 12, 1965 meeting under agenda item F-18, authorized the lease of this parcel that included the following in its recommendations: "(5) That any construction for roadway and/or parking over the right-of-way shall be done in such a manner as not to interfere with the free flowage of water over the right-of-way; (6) That the lessee shall maintain the drainage right-of-way and keep said right-of-way free and clear of any obstructions."

Further, the existing GL S-3915, under paragraph 9, Character of

Use, includes the statement, "The Lessee shall not construct any roadway or parking area so as to interfere with drainage of water over the existing easement and to maintain and keep the same clear."

As regarding drainage, staff notes a document in the GL S-3915 file concerning the construction of improvements for this parcel, signed by the Lessee and an abutting landowner, which includes the following:

"[T]he State of Hawaii, as a condition for approving the plans and specifications providing for the construction of certain improvements over and along said 8 foot right of way, requires all of the parties concerned to execute a document providing that they will not bring legal proceedings against the State of Hawaii for any loss or liability, claim or demand for damage or injury arising out of any cause attributable to the granting and leasing of said 8 foot right of way and of the approval of said plans and specifications for certain improvements over and along said 8 foot right of way; and

Now therefore, in consideration of the premises, the undersigned having duly approved the plans and specifications drawn by Harold Tanimura, Structural Engineer, providing for certain improvements over the said 8 foot right of way, do hereby agree and promise that they will provide for drainage as shown on said plans and specifications, and that they will not bring legal proceedings against the State of Hawaii for any loss or liability, claim or demand for damage or injury arising out of any cause attributable to the granting and leasing of said 8 foot right of way and of the approval of the said plans and specifications providing for the improvements over and along said 8 foot right of way."

Based on the above, staff recommends that conveyance documents require the Applicants to maintain the property for drainage.

RECOMMENDATION:

That the Board:

1. Find that the subject lands are economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics and, therefore, by definition is a remnant pursuant to Chapter 171, HRS.
2. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore

exempt from the preparation of an environmental assessment.

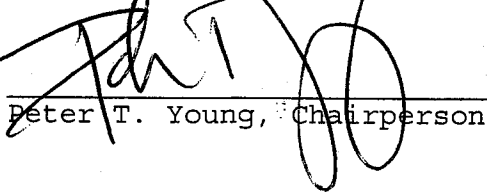
3. Authorize the subdivision and consolidation of the subject remnant by the applicants.
4. Subject to the applicants fulfilling all of the "Applicant Requirements" listed above, authorize the sale of the subject remnant to Prospect Estates and Sea View covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current deed or grant (remnant) form, as may be amended from time to time;
 - b. Remnant to be sold as is with applicants required to maintain the property for drainage;
 - b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
5. Cancellation of General Lease No. S-3915 to Sea View AOAO prior to the sale of the remnant.

Respectfully Submitted,



Al Godar
Land Agent

APPROVED FOR SUBMITTAL:


Peter T. Young, Chairperson



Association of Apartment Owners
Prospect Estates
982 Prospect Street
Honolulu, HI 96822

December 5, 2006

Mr. Al Jodar
Land Agent
Department of Land & Natural Resources
P.O. Box 621
Honolulu, HI 96809

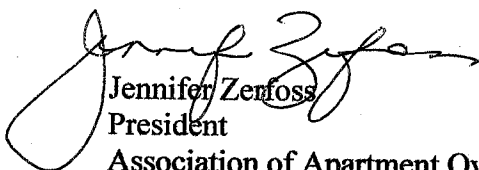
Sale of Remnant Parcel, TMK 2-2-04:65 (Currently Under General
Lease No. S-3915)

In your letter dated May 19, 2004, you offered the above described remnant parcel to the abutting landowners, Sea View Estates and Prospect Estates. The Association of Apartment Owners of Prospect Estates indicated its interest in purchasing a portion of the remnant parcel on May 24, 2004.

Since that date the Board of Directors of Prospect Estates has reversed its decision and no longer has an interest in purchasing a portion of said remnant parcel.

Please advise if there is anything further you need from the owners of Prospect Estates.
Thank you.

Sincerely,


Jennifer Zenfoss
President
Association of Apartment Owners

Cc: Clayton Tsuchiyama – Board Member
Cc: George Yoshimura – Board Member
Cc: John Rogers – Managing Agent

EXHIBIT "B"

RECEIVED
LAND DIVISION
2006 DEC - 8 A 10:35
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

CERTIFIED
MANAGEMENT, INC.

“Property Management at its Best”

December 14, 2006

Department of Land and Natural Resources
Al Jodar
PO Box 621
Honolulu, HI 96809-0621

Re: TMK 2-2-04:65, General Lease S-3915
Sea View AOA

Dear Al,

We have received a copy of Prospect Estates' letter to you stating that “Prospect Estates has no interest in purchasing a portion of said remnant parcel”.

At the last Sea View's Board of Director's meeting, the Board reaffirmed that they were interested purchasing a part or all remnant parcel.

Based on this, would you please provide the Board with list of the procedures that DNLR will be initiating to accomplish the purchase and what the requirement will be for Sea View to complete the purchase. This information is needed so that the Board can begin financial planning for the transaction.

Please call me if you have any questions at #837-5273.

Thank you for your assistance.

Sincerely,
Certified Management, Inc.
Agent for SEA VIEW AOA



Norman Lee, CMCA®, ASM®, ARM®
Account Executive

Cc: Board of Directors
Remnant File

RECEIVED
LAND DIVISION
2006 DEC 15 A 10:40
HAWAIIAN LAND DIVISION
STATE OF HAWAII

EXHIBIT “C”